

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5180 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

ASHOKKUMAR MOTILAL VAGHVANI

Versus

DISTRICT MAGISTRATE JUNAGADH

Appearance:

MR YOGESH S LAKHANI for Petitioner
MR PATEL, AGP for Respondent No. 1 & 2
MS DAWAVALA for Respondent No. 3, 4

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 19/11/1999

ORAL JUDGEMENT

1. The District Magistrate, Junagadh passed an order on 17th of June 1999 in exercise of powers u/s 3 sub-section [1] of Prevention of Black Marketing & Maintenance of Supply of Essential Commodities Act, 1980 [hereinafter referred to as 'the Act'], detaining the present petitioner on the ground that the petitioner was indulged in large scale malpractices of converting

controlled blue kerosene into white kerosene and selling the same into the open market and therefore, the detaining authority felt that there is no other alternative remedy but to detain the petitioner. The detaining authority further held that, as he held no license for the purpose departmental action was not possible and prosecution u/s 7 of the Essential Commodities Act may not help in preventing the petitioner from continuing his activities. And therefore, detention was the only remedy and therefore, the order for detention was passed by the District Magistrate, Junagadh on 17/06/1999.

2. The petitioner has approached this Court with this petition under Article 226 of Constitution of India, challenging the detention on various grounds.

2. Mr. Y.S.Lakhani, learned Advocate representing the petitioner has, for challenging the order of detention, pressed into service the ground that the detaining authority is wrong in stating that the petitioner held no license. In fact, it is clear from the Panchnama as well as statement of the petitioner that he did hold a license for storing 12,000 liters of kerosene under the Petroleum Act issued by the Additional District Magistrate, Junagadh which was valid from 21st July 1997 to 31st December 1999. Mr. Lakhani further submitted that, apart from being wrong, the detaining authority has failed to consider the less drastic remedy of canceling that license before resorting to the drastic remedy of detention. This has not been done and therefore, in light of the decision of this High Court rendered in the case of Upendra Jashubhai Joshi v/s District Magistrate, Navsari reported in 1999 [1] GLH 145, the detention would be rendered illegal and bad in law. The subjective satisfaction of the detaining authority would stand vitiated and therefore, the petition may be allowed and the impugned order of detention may be quashed and set aside.

3. Mr. Patel, learned AGP appearing for respondents No.1 and 2 submitted that the authority has taken into consideration all relevant aspects and was subjectively satisfied that the detention was the only remedy for preventing the petitioner from continuing his illegal activities. The petitioner had a license for storing free sale kerosene and the petitioner was found to be indulged into illegally obtaining controlled blue kerosene and then, converting the same into white free sale kerosene and therefore, cancellation of storage license could not have helped the authorities from

preventing the petitioner from continuing his illegal activities. Mr. Patel has placed reliance on decision of this High Court in the case of Parshottam Navalram v/s State of Gujarat and others as reported in 1985 [2] GLR 620.

4. The respondent No.3 is represented by Ms. Dawavala.

5. It is not in dispute that, at the time of raid, the petitioner had shown the license held by the petitioner for storing 12,000 liters of kerosene issued by Additional District Magistrate, Junagadh under the Petroleum Act. This fact is recorded in Panchnama as well. The said license was valid from 21st July 1997 to 31st December 1999. In the grounds of detention, it has been stated by the detaining authority in para 12 that the petitioner held no license under Essential Commodities Act and that, therefore, no departmental action against the petitioner is possible. Likewise, the prosecution u/s 7 or 12 [AA] of the Essential Commodities Act also may not help as the petitioner may continue his activities by obtaining bail or some injunction order, and therefore, alternative less drastic remedy is not possible to be resorted to and the only remedy is the detention under the Act.

6. As rightly urged by Mr. Lakhani, learned Advocate for the petitioner, the possibility of resorting to the cancellation of license issued by the Additional District Magistrate under the Petroleum Act for storing kerosene has not been considered by the detaining authority while passing the order. The authority ought to have considered whether the cancellation of that license would help the authority in preventing the petitioner from continuing his activities and thereafter only, the subjective satisfaction could have been arrived at by the authority concerned. In this regard, the decision in the case of Upendra Jashubhai Joshi [supra] may profitably be referred to. While referring to two Division Bench pronouncements, it was held that if the detaining authority did not indicate in the grounds of detention or in the order of detention that suspension or cancellation of license could be no effective remedy and the preventive detention was the only effective remedy, the order of detention would suffer from vice of non-application of mind. In the instant case also, the detaining authority has not considered the aspect of possibility of resorting to cancellation of storage license issued under the Petroleum Act for preventing the petitioner from continuing his activities. The

subjective satisfaction of the detaining authority, therefore, that detention was the only remedy and lesser drastic remedy cannot be effectively resorted to, would stand vitiated and consequently, the detention order.

7. The decision relied upon by Mr. Patel, learned AGP in the case of Parshottam Khemani [supra], a Division Bench of this Court held that cancellation of license or prosecution in a court may be alternative remedies available to the detaining authority and that, that may not be a bar to preventive detention, but the detaining authority is bound to consider these aspects. In the instant case, admittedly the petitioner did hold a license for storing 12,000 liters of kerosene issued by Additional District Magistrate. Admittedly, this aspect is recorded in the Panchnama made at the time of raid and therefore, the detaining authority was bound to consider the possibility of resorting to the remedy of cancelling the license for preventing the petitioner from continuing his activities before coming to the conclusion that detention was the only remedy.

8. It is true that the license held by the petitioner was issued for storing kerosene, under the Petroleum Act. But, it was issued by Additional District Magistrate, Junagadh. And in absence thereof, no person could have, legally stored kerosene. Without storing kerosene, trading is not possible. The authority therefore ought to have considered the available recourse of suspending or canceling the license.

9. Under the circumstances, the order of detention in question is found to be suffering from the defect of not considering the possibility of resorting to a less drastic remedy before arriving at a subjective satisfaction that the detention is the only remedy and the order, therefore, is bad in law.

10. The petition is therefore allowed. The impugned order of detention passed by the District Magistrate, Junagadh on 17th of June 1999 in respect of the petitioner Ashokkumar Motilal Vaghvani is hereby set aside with no orders as to costs. The petitioner be set at liberty forthwith, if not required to be detained in custody for any other case. Rule is made absolute accordingly.

[A.L.DAVE, J.]

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